IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 919 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAILESHKUMAR DHANJIBHAI GOHIL - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KETAN I ACHARYA for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR HARSHIT S TOLIA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

1. Heard Mr.Ketan Acharya, learned Advocate appearing on behalf of the applicant, Mr.M.R.Mengdey, learned A.P.P. appearing on behalf of respondent No.1

and Mr.Harshit Tolia, learned Advocate appearing on behalf of respondent No.2.

2. By way of this petition, under Article 227 of the Constitution of India, the petitioner has prayed for an appropriate Writ, direction and order quashing and setting aside the order dated 12.03.2004 passed by the learned J.M.F.C., Dhari in Misc. Criminal Application No. 157 of 2003 enhancing the amount of maintenance from Rs.300/- to Rs.2500/-. It is also further prayed to quash and set aside the order dated 29.10.2005 passed by the learned Additional Sessions Judge, Amerli in Criminal Misc. Application No. 233 of 2005 in not condoning the delay in preferring the Revision Application challenging the order passed by the learned J.M.F.C., Dhari referred to herein above.

3. Considering the fact that this Court proposes to remand the matter to the learned Additional Sessions Judge for considering the Revision Application on merits, this Court is not considering the prayer of the petitioner to quash and set aside the order dated 12.03.2004 passed by the

learned J.M.F.C., Dhari in Misc. Criminal Application No. 157 of 2003 as the same would be subject matter of the Revision Application before the learned Additional Sessions Judge. It is the contention on behalf of the petitioner that order dated 12.03.2004 passed by the learned J.M.F.C., Dhari in Misc. Criminal Application No. 157 of 2003 was ex-parte order and was passed without giving any opportunity to the petitioner and as soon as the petitioner came to know about the same, the petitioner preferred Revision Application before the learned Revisional Court. However, in the meantime, there was delay and, therefore, Criminal Misc. Application was filed for condoning delay, which has been dismissed by the learned Revisional Court.

4. Considering the facts and circumstances of the case, more particularly, allegation of the petitioner that the order passed by learned J.M.F.C., Dhari was ex-parte order and without giving any opportunity to be heard, it will be in the fitness of things to condone the delay in preferring the Revision Application and directing the learned Additional Sessions Judge, Amerli, to decide and

dispose of the Revision Application submitted by the petitioner on merits. This Court is of the opinion that the petitioner should not be non-suited on technical ground of delay in preferring the Revision Application and the petitioner should have been given opportunity of being heard.

5. For the reasons stated above, the petition succeeds in part. The order dated 29.10.2005 passed by the learned Additional Sessions Judge, Amerli in Criminal Misc. Application No. 233 of 2005 is hereby quashed and set aside and delay in preferring the Revision Application against the order dated 12.03.2004 passed by the learned J.M.F.C., Dhari in Misc. Criminal Application No. 157 of 2003, is hereby condoned. The learned Revisional Court/ Additional Sessions Judge, Amerli, is directed to decide and dispose of the Revision Application against the aforesaid order in accordance with law and on its own merits. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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